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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re KENDALL N. et al., Persons Coming
Under the Juvenile Court Law.

SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

ERNEST N.,

Defendant and Appellant.

A132098

(Solano County
Super. Ct. Nos. J35256, J40686,
J40687)

The juvenile court found the four minor children of appellant Ernest N. to be dependent children and ordered reunification services for him. On appeal, Ernest contends that the juvenile court erred by basing many of its findings of jurisdiction on the unreliable, out-of-court statements of three of the minors. Without these statements, he reasons that the evidence was insufficient to support any of the jurisdictional findings. We affirm the jurisdictional order.

I. FACTS

A. *Family History*

Cody N. was born in September 2001 to appellant Ernest N. and his wife Stacey N.¹ Cody's sister—Kendall N.—was born in December 2002. Twice in early January 2003, Solano County authorities received referrals that the minors were being neglected. Later that month, Ernest was arrested for spousal abuse. In June 2003, Ernest was convicted of this offense and sentenced to four years in prison. During his imprisonment, Ernest participated in classes addressing anger management issues, as well as alcohol and narcotics abuse programs.

In December 2004, Cody and Kendall were living with Stacey while Ernest was still in prison. The minors were found to have had significant physical injuries for which Stacey offered an insufficient explanation. Cody and Kendall were detained and placed in foster care. In December 2004, a petition was filed asking that both minors be declared dependent children. (Welf. & Inst. Code,² § 300, subds. (a)-(b).) Cody and Kendall were placed in the custody of Ernest's mother.

In February 2005, Stacey admitted that she had failed to protect the minors from injury. The juvenile court sustained the dependency petition on failure to protect grounds, based on Stacey's admission and Ernest's absence. (§ 300, subd. (b).) In April 2005, the minors were returned to Stacey's custody, supported by family maintenance services.

In May 2005, Ernest was released early from prison, based on his good behavior. One condition of his parole was that he have no contact with Stacey for six months. In preparation for his anticipated reunion with Stacey at the expiration of the parole condition, Ernest completed anger management and parenting classes. He also maintained his sobriety and participated in spousal abuse classes.

¹ As Stacey did not challenge the jurisdictional order, we include information about her only as it is relevant to the issues that Ernest raises on appeal.

² All further statutory references are to the Welfare and Institutions Code.

In September 2005, after a six-month review hearing, the juvenile court found that Ernest had made progress toward alleviating the problems that caused Cody and Kendall to be dependent children. It continued family maintenance services for another six months. By the time of the 12-month review hearing, Ernest had been certified as an anger management facilitator and a domestic violence counselor. Stacey and Ernest were not yet living together, but Cody and Kendall saw their father daily. In March 2006, the juvenile court terminated jurisdiction over Cody and Kendall.

A second daughter—Erin N.—was born to Stacey and Ernest in October 2006. In 2009, Ernest lost his job. That year, a report that Ernest may have physically abused one of the minors reached department officials, but no action was deemed necessary. In September 2009, Ernest began using drugs again. In January 2011,³ Stacey’s mother saw Ernest punch Cody in the head. On February 21, Stacey gave birth to another son, Nathan N.

B. Current Dependency Proceeding

Late in February, the department received various reports that Ernest was using drugs, had threatened his mother, had choked four-year-old Erin, and had evicted Stacey and one-week-old Nathan from the family home overnight. Ernest’s mother was reluctant to return Cody, Kendall and Erin to her son because she feared for their safety. Cody told his grandmother that he was grateful to stay with her because he was tired of being hurt by Ernest. On March 1, department officials sought and obtained a court order authorizing interviews of Cody and Kendall about these allegations.

A social worker interviewed Cody and Kendall at school. Initially, Cody was reluctant to report about family matters, expressing a concern that he might be removed from his home. He also discouraged Kendall from making negative reports. Later, Cody stated that his earlier denials were lies. He and Kendall both reported physical abuse, domestic violence, and substance abuse. Erin was also interviewed—she reported that Ernest had choked her neck a few days before Nathan was born. When the social worker

³ All subsequent dates refer to the 2011 calendar year unless otherwise indicated.

confronted Stacey and Ernest at their home about these reports, they denied any violence had occurred. Ernest admitted that he used methamphetamine. The minors were detained by Vallejo police. When Cody was placed in a foster home the next day, he immediately inquired if the foster parents used “sticks or belts.”

On March 3, the department filed a petition seeking to have all four minors declared dependents of the juvenile court. The petition alleged inter alia domestic violence committed in the children’s presence, Ernest’s substance abuse and his physical abuse of Cody. (§ 300, subds. (b), (c), (j).) The minors’ detention was approved on March 4. On March 11, Ernest’s hair tested positive for amphetamine, methamphetamine and marijuana. On March 15, Cody was moved to a different foster home because of his aggressive behavior with his sisters.

In advance of the April jurisdiction and disposition hearing, the department issued a report including a summary of statements given by the three older siblings on March 14. Initially, Cody was hesitant to talk with the social worker, refusing to answer many questions, particularly those about Ernest’s marijuana use. When asked about Ernest, Cody first reported that his father was physically violent with his mother, and then recanted this statement, saying that he was “just joking.” When Cody asked why the social worker was making notes, the worker explained that he would put Cody’s statements in a report for the court to review. Cody then reported that Ernest did not hit people. Cody also denied that Ernest used drugs.

His sisters also spoke with the social worker. Kendall denied that Ernest had ever hit or choked anyone at home and denied seeing any marijuana, pornography, guns or explosives at home. Erin reported that her father told her not to tell, but that he hits. When her parents argue, Erin said that Ernest hits Stacey, frightening the child. The four-year-old also reported that she and her siblings are sometime hit with a belt and that twice, Ernest had kicked Stacey out of the house.

Both parents sought a contested jurisdiction hearing. The juvenile court found Ernest to be the presumed father of all four minors. It amended two allegations of the petition.

At the hearing, a social worker testified that he had assessed the risk to the children if they were returned to the family home. He considered the domestic violence and physical violence that the minors reported had occurred in the home, Nathan's young age, and denials by Ernest and Stacey that any recent violence had occurred in the home despite the reports of the children. He noted that Cody and Kendall had changed their stories since they were initially interviewed. Erin—then four years old—told the social worker at the beginning of her statement that “My Daddy told me not to tell you.” He noted signs of aggression in Cody and Kendall that might be consistent with children exposed to violence at home. He also told the juvenile court that Ernest had admitted that in 2009, he began using methamphetamine again.

The parents both testified at the hearing. Ernest denied punching Cody in the head and denied being present during the visit when Stacey's mother reported that this incident had occurred. He also denied kicking Stacey out of the house. He admitted that he and Stacey sometimes argued, but that they do not engage in domestic violence. Since his release from prison, he admitted using drugs three times only—on September 20, 2009, January 29, 2010, and February 21, 2011.

Stacey testified that after the initial dependency petition, she had learned how to avoid domestic violence. She and Ernest still argued, but she took steps to see that their arguments did not escalate into violence. Ernest did not kick her and Nathan out of the house; instead, she left to give her and Ernest a time out. She denied that any domestic violence or any physical violence—other than the occasional spanking—had taken place in their home since Ernest's release from prison.

Stacey discounted concerned reports from the grandmothers. Ernest's mother had refused to return the minors to Ernest, alienating the parents. Stacey discredited her own mother's report that she saw Ernest strike Cody, denying that the incident ever occurred. Stacey dismissed as hearsay reports of Ernest's mother that the minors complained of physical abuse by Ernest.

The department argued that the three older children disclosed that physical abuse had occurred in the home. The reports of physical violence from Ernest's mother were

corroborated by the minors themselves. The fact that Cody, Kendall, Erin and a grandmother all reported family violence tended to corroborate the reports, the department reasoned. Counsel for the department noted that one of Ernest's admitted relapses into drug use occurred three days before the incident giving rise to intervention. For his part, Ernest's counsel argued that the evidence obtained from the children was unreliable. Ernest offered to leave the home if that would facilitate placing the minors with Stacey until the department and the court were confident that the children would be safe with him back in the home.

At the conclusion of the April 4 hearing, the juvenile court adjudged the minors to be dependent children, finding true allegations of failure to protect and sibling abuse. Specifically, the court found true allegations of domestic violence, Ernest's substance abuse, physical abuse, and sibling abuse. (§ 300, subds. (b), (j).) Allegations that the home was unsafe and that the minors had suffered serious emotional damage were dismissed. (*Id.*, subd. (c).) Family reunification services were ordered for both parents. The minors were initially placed together in a foster home. By April 15, they were moved to the home of a maternal aunt and uncle. On April 20, a first amended petition was filed to conform to the amendments that the juvenile court made on the face of the original petition.

II. JURISDICTION

Ernest contends that the hearsay statements of his minor children about domestic violence and physical abuse in the family home were not reliable enough to provide substantial evidence to support the juvenile court's related jurisdictional findings. Hearsay evidence contained in a social study may support a jurisdictional finding in some circumstances. (§ 355, subds. (b)-(d); see generally *In re Lucero L.* (2000) 22 Cal.4th 1227, 1242-1244; *In re Cindy L.* (1997) 17 Cal.4th 15, 35.) We need not determine whether the hearsay evidence in the case before us is sufficient to support the challenged jurisdictional findings, because an unrelated jurisdictional finding remains to support the juvenile court's determination that the minors were dependent children.

In this matter, the juvenile court took jurisdiction over the minors based on a finding of Ernest's ongoing substance abuse, as well as the challenged findings of domestic violence, physical abuse and sibling abuse. Specifically, it found that Ernest had a history of substance abuse impairing his judgment and his ability to care for, support and supervise the minors. It found that Ernest had not effectively addressed his substance abuse problem, placing his children at substantial risk of serious physical harm and emotional damages.

Substantial evidence supports this finding. Ernest admitted using methamphetamine three times between September 2009 and February 2011. He also told the social worker that he used marijuana. A strand of his hair tested positive for both drugs in March 2011, corroborating these admissions. He appears to have submitted a diluted urine sample at the same time, which tested negative for the presence of drugs, suggesting a manipulation of the testing process intended to minimize detection of substance abuse. Ernest's mother reported that in late February her son seemed more aggressive—conduct that was consistent with a return to drug use.

In his favor, Ernest testified that he was addressing his substance abuse problem by attending 12-step meetings and obtaining a drug treatment assessment. However, the social worker was unable to verify these reports. The juvenile court was entitled to weigh Ernest's credibility and to find it wanting when it found that he continued to have a substance abuse problem posing ongoing risks to the minors. On appeal, we have no power to weigh the credibility of witnesses, but must leave this determination to the juvenile court, based on its opportunity to observe the appearance and demeanor of the witnesses. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.)

Although the department had the burden in the juvenile court to show that jurisdiction existed, on appeal, Ernest bears the burden of establishing that there is no substantial evidence to support the juvenile court's finding of jurisdiction. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 210; *In re A.M.* (2010) 187 Cal.App.4th 1380, 1388.) We need only find substantial evidence to support one basis of jurisdiction in order to

uphold the juvenile court's jurisdiction order. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; see § 300.) The finding of Ernest's substance abuse forms an independent basis of juvenile court jurisdiction over the minors. (See § 300, subd. (b).)

The jurisdictional order is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.